



ORDINANCE NO. 155

AN ORDINANCE TO PROHIBIT THE SALE OF INTOXICATING LIQUORS IN THE CITY OF REXBURG; DEFINING MEANING OF “INTOXICATING LIQUORS” FOR THE PURPOSE THEREOF; MAKING CERTAIN ACTS MISDEMEANORS; PROVIDING AND PRESCRIBING CONDITIONS ON WHICH INTOXICATING LIQUORS MAY BE SOLD FOR CERTAIN PURPOSES, NAMING THEM, AND PRESCRIBING A PENALTY FOR THE VIOLATION THEREOF; DECLARING CERTAIN PLACES AND THINGS IN THE SAID CITY TO BE NUISANCES; PROVIDING THAT THE FINDING OF INTOXICATING LIQUORS IN CERTAIN PLACES AND THE STAMP OR CERTIFICATE SHOWING THE PAYMENT OF THE UNITED STATES INTERNAL REVENUE SPECIAL TAX, SHALL BE PRIMA FACIA EVIDENCE THAT SUCH PLACES ARE COMMON NUISANCES, PROVIDING FOR THE ABATEMENT OF COMMON NUISANCES BY ACTIONS IN THE POLICE COURT AND MAKING THE OWNERS OF PREMISES WHERE SUCH NUISANCES ARE FOUND, LIABLE FOR MAINTAINING THE SAME; PROVIDING FOR THE ISSUING OF SEARCH WARRANTS AND FOR THE EXECUTION THEREOF; PRESCRIBING THE DUTIES OF THE CHIEF OF POLICE AND OTHER PEACE OFFICERS OF SAID CITY IN CONNECTION WITH SUCH WARRANTS, PROVIDING FOR THE SEIZURE OF INTOXICATING LIQUORS AND OTHER PROPERTY AND THAT THE SAME MAY BE USED AS EVIDENCE IN ANY HEARING OR THAT UNDER THIS ORDINANCE, AND PROVIDING FOR THE DISPOSITION OR DESTRUCTION OF SUCH LIQUORS AND OTHER PROPERTY; AND PRESCRIBING A PENALTY FOR THE MAINTAINING OF SUCH A COMMON NUISANCE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF REXBURG:

SECTION I – It shall be unlawful for any person, firm, company, or corporation to sell, furnish, deliver, give away, or otherwise dispose of any intoxicating liquor, either directly or indirectly in the City of Rexburg, except as hereinafter provided.

SECTION II - Any person who shall sell, furnish, deliver, give away or otherwise dispose of to another, any intoxicating liquor either directly or by device or subterfuge, in the City of Rexburg, except as in this ordinance specially provided, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine of not less than \$50.00 nor more than \$100.00.

SECTION III – “Intoxicating Liquors” as used in this ordinance shall be understood to include all spirituous, vinous, malt and fermented liquors, and all mixtures, preparations and compounds thereof; bitters, sarsaparillas, and other mixtures, compounds and beverages that produce intoxication.

SECTION IV – Any person who shall make, aid, abet, counsel or procure any sale of intoxicating liquors, except as hereinafter provided, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished as provided in section two of this ordinance.

SECTION V – Any person, firm, company, or corporation being the owner, proprietor, or having control or possession of any building, room, booth, enclosure, or other place within the City of Rexburg, who shall permit any person either directly or indirectly, or by any device or subterfuge,

to sell furnish, deliver, or give away, or otherwise dispose of to any person, any intoxicating liquor therein, in violation of law, or the provisions of this ordinance, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by fine as provided in section two of this ordinance.

SECTION VI – The provisions of this ordinance shall not be intended to prohibit the sale of denatured?? or wood alcohol, or the sale of pure alcohol for medicinal, mechanical, or scientific purposes, or wine for sacramental purposes, or intoxicating liquors for medicinal purposes: Provided, however, that no pure alcohol shall be sold, furnished, delivered or given away to any person for mechanical, manufacturing or scientific purposes, in the City of Rexburg, except by a registered pharmacist actually engaged at the time in the pharmaceutical business and no such sale or delivery shall be made until the person applying for the same shall sign a written application therefore in duplicate in substantially the following form.

APPLICATION TO PURCHASE INTOXICATING LIQUORS

I, _____, residing at _____ in the county of _____, in the state of Idaho, by occupation a _____, do hereby make application to purchase _____ (here state quantity) of _____ (here state kind of liquor) to be used for _____ purposes, and for these purposes only.

Dated this _____ day of _____ 19__.

Which application shall be endorsed by the Mayor of the City, or the Chief of Police, or the Police Judge, which endorsement shall be written or printed on the back of such application, and shall be in substantially the following form:

I do hereby certify that I am personally acquainted with _____, the within named applicant and he is engaged in the occupation stated on said application.

Dated at Rexburg, this _____ day of _____ 19__.

Provided, further, that alcohol or other intoxicating liquors of any kind shall not be sold, delivered, furnished, given away or otherwise disposed of to any person in the said city, for medicinal purposes, by any person except a registered pharmacist actually at the same in the pharmaceutical business, nor until the person applying for the same shall present a prescription in duplicate signed by a physician licensed to practice medicine in the state of Idaho. No physician shall issue any such prescription except in case of actual sickness. Every such prescription shall contain the name and quantity of liquor prescribed, the name of the person for whom prescribed, the date upon which the prescription was written, and the direction for the use of the liquor so prescribed.

SECTION VII – All applications to purchase alcohol or wine as provided for in section six hereof shall be made in duplicate, the original thereof shall be written or printed upon white paper and the duplicate copy upon colored paper. Any person who sells or delivers any intoxicating liquor upon such applications, shall hold all such applications and the duplicates thereof until the first day of the month immediately following the date of such sale and delivery. All prescriptions issued by any physician as provided for in section six hereof shall be made in duplicate, the originals thereof shall be written or printed upon white paper and the duplicate copies upon colored paper. The original and duplicate shall be delivered to the patient or the person applying therefore, who shall present both to the pharmacist, and the pharmacist shall hold both the original and duplicate until the first day of the month immediately following the date of such sale or delivery.

SECTION VIII – Every person, firm, company, or corporation who shall sell or deliver any intoxicating liquors upon any application or prescription as herein before provided, shall immediately upon such sale or delivery cancel such application or prescription by writing across the face of the original and duplicate thereof, with ink or in deli able pencil, the word “Cancelled”, and the date of cancellation, and shall on the first day of the month immediately following the date of such cancellation, file the duplicate copies with the City Clerk.

SECTION IX – No person, firm, company or corporation shall sell or deliver any intoxicating liquor upon any application or prescription after ten days from the date thereof, and not more than one sale shall be made upon any application or prescription.

SECTION X – Any person who shall make any false statement in any application to purchase intoxicating liquors, or who shall use as a beverage any intoxicating liquors procured upon any application under the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine as provided in section two hereof.

SECTION XI – Any physician who shall issue any prescription in the City of Rexburg, contrary to the provisions of this ordinance for any person to obtain intoxicating liquor, or any pharmacist who shall sell any such liquor upon any such prescription issued contrary to the terms hereof or any person, firm, company, or corporation who shall sell any intoxicating liquor upon any application or prescription as provided herein and fails or refuses to file with the city clerk all duplicates of such applications or prescriptions, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than \$25.00 nor more than \$100.00.

SECTION XII – All places in the City of Rexburg where intoxicating liquors are sold, furnished, delivered, given away, or otherwise disposed of, to any person, in violation of law or the provisions of the ordinance; or where persons are permitted to resort for purposes of drinking intoxicating liquors as a beverage; or when intoxicating liquors are kept for sale, delivery or disposition in violation of law or the provisions of this ordinance, and all intoxicating liquors, vessels, glasses, kegs, pumps, bars and other property kept in and used in maintaining such places, are hereby declared to be common nuisances, and every person who maintains, or assists in maintaining any such common nuisance shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine in the sum of not less than \$75.00 nor more than \$100.00 and costs of prosecution, or by imprisonment in the city jail for not less than thirty nor more than sixty days, or by both such fine and imprisonment.

SECTION XIII – In all prosecutions of maintaining a common nuisance in the said city of Rexburg, as herein defined, the finding of the intoxicating liquors in the possession of one not having lawful authority to sell or dispose of the same, except in a formal dwelling not used in connection with a place of business or public resort, shall be prima fascia evidence that such intoxicating liquors are kept for sale, delivery or disposition in violation of law and of this ordinance. And upon the trial of any person charged with maintaining or assisting in maintaining a common nuisance as hereinbefore defined, proof of the finding of such intoxicating liquors in the possession of such person (except in the places alone mentioned) shall be deemed sufficient to authorize a verdict of conviction for such offense in the absence of evidence showing that such liquors were in the possession of such person for a lawful purpose. The finding in a place fitted up with bars or counter and glasses or other paraphernalia usually connected with places where intoxicating liquors are sold as a beverage, or in places used for the storage of intoxicating liquors of a stamp or certificate showing the payment by any person of the United State Internal Revenue special tax for the sale distilled or malt liquors at such place for any period of time not then expired, shall be prima fascia evidence that the person or persons to whom the same was issued was, at the time of finding such special tax stamp, maintaining a common nuisance at such place.

SECTION XIV – If the City Attorney, chief of Police, or any peace officer of the City of Rexburg, has probable cause to believe that any intoxicating liquors are being sold, furnished, delivered, given away, or otherwise disposed of in violation of law or the provisions of this ordinance or are kept for sale, delivery or disposition in violation thereof, in the City of Rexburg, it

shall be the duty of such City Attorney, Chief of Police, or peace officer to forthwith make and file with the Police Judge an affidavit of probable cause, setting forth and particularly describing the place where such intoxicating liquors are sold, furnished, delivered, given away, or otherwise disposed of or are kept for sale, delivery or disposition, and the intoxicating liquors kept in such place, and upon the filing of such affidavit the Police Judge shall issue warrant commanding the officer to whom it is directed to search the premises described in such affidavit, (who shall forthwith search such premises), and if such intoxicating liquors, or any intoxicating liquors, are then found to seize the same with vessels in which they are contained and all implements, and furniture used and kept in such place for the unlawful selling, furnishing, delivering, giving away or otherwise disposing of such intoxicating liquors and to safely keep the same subject to the order of the Police Judge. The affidavit shall describe the place to be searched, with sufficient particularity to identify the same, and shall describe the intoxicating liquors and other property to be seized as particularly as practicable. But any description, however general, which will enable the officer executing the warrant to identify the premises to be searched and the property to be seized shall be deemed sufficient.

The officers executing the warrant shall forthwith return the same to the police judge, with a certificate of his proceedings thereon, and a complete inventory of all property seized by him thereunder. All intoxicating liquors and other property seized under said warrant shall be held by the officer executing the warrant subject to the order of this police judge.

The officer executing such warrant shall forthwith file a complaint against the person or persons keeping the place where such intoxicating liquors were found, charging him with such offense under the ordinances of the City of Rexburg relating to the sale of intoxicating liquors as the evidence in the case appears to warrant, and such intoxicating liquors or other property seized under said warrant may be used as evidence in the trial of the case before the police judge.

If there is not sufficient evidence at such trial to warrant a conviction of the defendant, or if no complaint was filed or arrest made, it shall be the duty of the Police Judge to fix a time for hearing and determining the purpose for which such intoxicating liquors were kept. The Police Judge shall issue notice of such hearing, and cause such notice to be served upon the person claiming such intoxicating liquors (if he be known, and, if not by posting a copy of such notice on the building or premises where such liquors were found) at least ten days before the date of such hearing. If, at the time fixed for such hearing, no claimant or other person appears or if after a hearing thereon, the Police Judge finds from the evidence that such intoxicating liquors were kept for use or used in violation of law, he shall order the same to be publicly destroyed.

SECTION XV – Nothing herein contained shall be construed to prevent the filing of a complaint charging any person with an offense under the law or the ordinances of the City of Rexburg relating to the sale of intoxicating liquors before an affidavit has been filed for the issuance of a search warrant.

PASSED AND APPROVED THIS 19TH DAY OF MARCH, 1912.

R.G. ARCHIBALD

Mayor

ATTEST: J.C. ANDERSON

City Clerk

I hereby certify that the foregoing is a complete copy of the original ordinance.

J.C. ANDERSON, City Clerk